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7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
11

12 UNITED STATES OF AMERICA,
13 Plaintiff,

14 v.

15 FUJIAN JINHUA INTEGRATED CIRCUIT
16 CO., LTD., et al.,
17 Defendant.

Case No. 18-CR-465 MMC

**REPLY TO GOVERNMENT'S
RESPONSE TO MOTION FOR
BILL OF PARTICULARS**

Date: February 6, 2019
Time: 2:15 p.m.

18
19 Defendant Fujian Jinhua Integrated Circuit Co., Ltd. ("Jinhua"), through its counsel,
20 hereby replies to the government's response to Jinhua's motion for a bill of particulars
21 ("Response") under Federal Rule of Criminal Procedure 7(f).

22 **I. INTRODUCTION**

23 The government argues that a bill of particulars is not necessary for three reasons:

- 24 A. The government insists that it "has already provided sufficient detail through the
25 Indictment to inform Jinhua of the charges against it"; (Response at 5)
26 B. The government believes that Jinhua is not entitled to "evidentiary details or legal
27 theories of the government case against it" under the Ninth Circuit law; (*Id.* at 7-9)
28

1 and;

2 C. The government’s forthcoming discovery renders Jinhua’s request for a bill of
3 particulars premature. (*See id.* at 5, 10.)

4 As explained below, none of these reasons withstands scrutiny. In fact, each reinforces
5 Jinhua’s position that a bill of particulars is necessary for clarifying the charges against the
6 company – a position supported by substantial authority from this district.

7 **II. ARGUMENT**

8 **A. The government cannot identify any specific allegations of wrongdoing by**
9 **Jinhua**

10 The government is correct in pointing out that the Indictment is lengthy and contains
11 many paragraphs. The “highlights” from the Indictment included in its response (*see id.* at 2-4),
12 however, only underscore the paucity of “statement[s] of the *facts and circumstances* as will
13 inform [Jinhua] of the specific offence . . . with which [it] is charged.” *Russell v. United States*,
14 369 U.S. 749, 765 (1962) (citing *United States v. Hess*, 124 U.S. 483, 487) (emphasis added).

15 For instance, the government’s response still fails to elucidate who at Jinhua was involved
16 in the charges, when Jinhua purportedly joined the conspiracy, and under what factual theory the
17 government alleges that Jinhua committed wrongdoing. All of this information is critical to
18 Jinhua’s ability to prepare its defense and avoid surprise at trial. Indeed, the government’s
19 allegation that “Jinhua and UMC negotiated and later entered into a technology cooperation
20 agreement whereby, with funding from Jinhua, UMC would develop DRAM technology, transfer
21 the technology to Jinhua, and Jinhua would mass produce DRAM” (Response at 2, *citing*
22 Indictment ¶ 20) does not speak to any conspiracy or wrongdoing at all.

23 At best, the government’s response provides an important clue that well-illustrates the
24 need for a bill of particulars here: paragraph 49 of the Indictment states that “[s]ometime after
25 February 2017, UMC and Chen concealed at least one electronic device containing
26 misappropriated Micron materials from Taiwan law enforcement,” but does not mention Jinhua at
27 all. In its response, the government clarifies its position that by that time co-defendant Stephen
28 Chen “had assumed the post of President of Jinhua already[.]” (Response at 4.) The government

1 appears to be suggesting that it believes that Chen was acting on behalf of Jinhua when he was
2 also allegedly working with UMC to conceal the electronic device. Jinhua should not be
3 required, however, to rely on clues and innuendo to understand the government's view of the
4 facts and circumstances of the charged offenses. This is especially so here, where the Indictment
5 alleges that Jinhua was established in February 2016 (Indictment ¶ 5), but makes broad
6 allegations of conduct and overt acts – including alleged conduct by Jinhua – that predate
7 Jinhua's very existence (*see, e.g., id.* ¶¶ 35-38).

8 **B. Jinhua's request is well supported by law of this Court and the Ninth Circuit**

9 The government mischaracterized Jinhua's request as "nothing more than an improper
10 attempt to bind the prosecution and have the government lay out its case"; and that Jinhua is
11 looking for "discovery of evidentiary details" and "the government's legal theories as to how it
12 will prove the charges against Jinhua at trial." (Response at 8-9.) Instead, Jinhua merely seeks
13 *factual theories* of the company's involvement in the alleged conspiracies and the substantive
14 charge. Ample authority establishes that "disclosure of the government's *factual theory* of the
15 case is one of the primary purposes of a bill of particulars." *United States v. Etienne*, No. CR 17-
16 00093 WHA, 2018 WL 1456658, at *2 (N.D. Cal. Mar. 23, 2018) (emphasis added); *see also*
17 *United States v. Williams*, No. 13-CR-00764-WHO-1, 2015 WL 3830515, at *1 (N.D. Cal. June
18 19, 2015) (ordering a bill of particulars "because [the defendants] are entitled to know the
19 government's *factual theory* for their involvement in the [alleged crimes]") (emphasis added);
20 *United States v. Middleton*, 35 F. Supp. 2d 1189, 1193 (N.D. Cal. 1999) ("the goal of a bill of
21 particulars is satisfied if the defendant is aware of '*the theory of the government's case*'")
22 (quoting *United States v. Ryland*, 806 F.2d 941, 942 (9th Cir. 1986) (emphasis added)).

23 The cases cited by the government are distinguishable. For example, the government
24 relies on *United States v. Giese* for its position that "[a] request for the 'when, where, and how' of
25 *every act in furtherance of the conspiracy* [is] equivalent to a request for complete discovery of
26 the government's evidence, which is not a purpose of the bill of particulars." (Response at 7,
27 *citing* 597 F.2d 1170, 1181 (9th Cir. 1979)) (emphasis added). But the very next sentence in
28

1 *Giese* states that “[a] defendant is not entitled to know all the Evidence the government intends to
2 produce, but only the Theory of the government’s case.” *Giese*, 597 F.2d at 1181. Therefore,
3 while a broad demand for details regarding “every act in furtherance of a conspiracy” may be
4 impermissible, Jinhua is clearly entitled to “the theory of the government’s case” under *Giese*.
5 (*Id.*)

6 The government’s reliance on *United States v. Dicesare* also is misplaced. (Response
7 at 7). The defendants in *Dicesare* “requested a bill for three reasons: (1) to obtain the names of
8 any *unknown* coconspirators; (2) to determine the *exact* date on which the conspiracy allegedly
9 began; and (3) to delineate *all other overt acts* that comprised the charged activity.” *United*
10 *States v. Dicesare*, 765 F.2d 890, 897 (9th Cir. 1985) (emphasis added). Not surprisingly, the
11 Ninth Circuit ruled that “[t]hese reasons ... do not warrant a bill of particulars.” *Id.* But Jinhua is
12 not making such a broad demand: Jinhua tailored its eleven requests so that the company can
13 understand “the specific charges being presented” against it. *United States v. Long*, 706 F.2d
14 1044, 1054 (9th Cir. 1983). Indeed, courts in this district routinely order bills of particulars that
15 would provide precisely the kind of information that Jinhua needs here. For example:

- 16 • In *Etienne*, the court required the government to clarify the “earliest known date”
17 each defendant was participating in the alleged conspiracies, and to “provide details
18 of who was present at meetings in which the [alleged crime] was discussed, when
19 and where such meetings took place, and what each defendant did or said to indicate
20 participation in the conspiracy.” *Etienne*, 2018 WL 1456658 at *2, *4-5;
- 21 • In *United States v. Handl*, even after the government provided most of the
22 information requested in its response to the defendant’s motion, the court ordered
23 the government to identify the earliest known date at which each individual
24 defendant joined the conspiracy, without prejudice to the government later proving
25 an even earlier date. No. CR 15-00126 WHA, 2015 WL 5029062, at *4 (N.D. Cal.
26 Aug. 25, 2015);
- 27 • In *United States v. Cerna*, the Court directed the government to provide details
28 including “*when* each defendant is alleged to have first joined each conspiracy,”

1 “who was present at meetings where [alleged crimes] were discussed, *when* and
2 *where* such meetings took place, *what* was said at these meetings, and *what* each
3 defendant allegedly did to indicate their participation in the conspiracy.” No. CR
4 08-0730 WHA, 2009 WL 2998929, at *2-3 (N.D. Cal. Sept. 16, 2009);

- 5 • Similarly, in *United States v. Alvarez*, the court required the government to provide a
6 bill of particulars clarifying “*when* each defendant is alleged to have first joined each
7 conspiracy[,]” “*who* was present at meetings in which [alleged crimes] were
8 discussed, *when* and *where* such meetings took place, *what* was said at the meetings,
9 and *what* each defendant did or said to indicate participation in the conspiracy.” No.
10 14-CR-00120 EMC, 2014 WL 7240670, at *2-3 (N.D. Cal. Dec. 19, 2014).¹

11 Regarding the alleged trade secrets, other than the conclusory statement that the
12 “Indictment describes with particularity the specific trade secrets” (Response at 2), the
13 government provides no legal or factual analysis to counter Jinhua’s request. The government
14 does not dispute that Trade Secret 1 is not a specific document, but instead a broadly-described
15 “process” contained in the “totality of information” allegedly stolen by some co-defendants and
16 provided to others, including “[the] ways and means in which proprietary and non-proprietary
17 components were compiled and combined by Micron to form substantial portions of the DRAM
18 design and manufacturing process[.]” Indictment ¶12(a); *see also United States v. Liew*, No. 11-
19 CR-00573-JSW, slip op. at 4 (N.D. Cal. June 11, 2013), ECF No. 338 (“Trade Secret 1 is
20 identified as . . . [a] process to manufacture TiO2 . . . includ[ing] ways and means in which
21 proprietary and non-proprietary components were compiled and combined . . .”). Similarly, the
22 government does not dispute that Trade Secrets 2 through 8 are either PDFs of hundreds of pages
23 or expansive Excel spreadsheets, which may also include proprietary and nonproprietary
24

25 ¹ The government relies on a single case from this district, Judge Alsup’s 2006 opinion in
26 *United States v. Diaz*, 2006 WL 1833081 (N.D. Cal. June 30, 2006), to support its argument that
27 courts have denied requests for the type of information Jinhua seeks here. (Response at 8.) The
28 government ignores the numerous more recent Judge Alsup opinions discussed above. *See Etienne*, 2018 WL 1456658, at *2, *4-5; *Handl*, 2015 WL 5029062, at *4; and *Cerna*, 2009 WL 2998929, at *2-3.

1 components. (*See* Indictment ¶¶ 12(b)-(h).) This is especially problematic as the Indictment does
2 not allege with specificity how Jinhua received any of the alleged trade secrets, except that UMC
3 transferred the DRAM technology to Jinhua pursuant to the technology cooperation agreement
4 between the two parties. As such, the government should be required to provide specific
5 information about the alleged trade secrets.

6 **C. Pending discovery is irrelevant to the Court’s decision**

7 The government cites no authority to support its assertion that Jinhua’s request “is
8 premature[.]” (Response at 10.) This is because “forthcoming discovery” does not preclude a bill
9 of particulars. *See, e.g., Alvarez*, 2014 WL 7240670 at *1 (granting in part a motion for a bill of
10 particulars “with the Court’s knowledge of the disclosures made and *not made* by the government
11 in the case so far”) (emphasis added); *see also* Fed. R. Crim. P. 7(f) (“The defendant may move
12 for a bill of particulars *before or within 14 days after arraignment* or at a later time if the court
13 permits.”²) (emphasis added).

14 Instead, “a court should consider whether the defendant has been advised adequately of
15 the charges through the indictment and all other disclosures made by the government.” *Long*, 706
16 F.2d at 1054. Following *Long*, this Court has ruled that the quality of the indictment itself is the
17 key to its analysis. *See Alvarez*, 2014 WL 7240670, at *2 (citing *Long* and holding that a bill of
18 particulars “is appropriate where an indictment is ambiguous ... In other words, the purpose of a
19 bill of particulars is to clarify ambiguities in an indictment, not to serve as a replacement for
20 discovery requests”); *see also United States v. Wang*, No. 5:12-CR-00581-EJD, 2014 WL
21 794203, at *2 (N.D. Cal. Feb. 26, 2014) (citing *Long* and holding that “[t]he decision to grant or
22 deny a bill of particulars ... is appropriate where an indictment is ambiguous such that a
23 defendant needs clarification in order to prepare a defense”). Because the Indictment is
24 insufficient and ambiguous with respect to Jinhua, a bill of particulars is appropriate and
25 necessary at this time.

26
27 ² Nor does the government make any effort to explain how the “fulsome discovery” it
28 intends to produce will provide the necessary information *related to Jinhua*.

1 **III. CONCLUSION**

2 For all of the foregoing reasons, as well as those stated in Jinhua’s motion, the Court
3 should order the government to provide a bill of particulars that sets forth its factual theories and
4 specifies the necessary details of the alleged trade secrets.
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7 Dated: February 4, 2019

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